

MHRG010009822025



Spl. (NDPS) Case No. 42/2025

State of Maharashtra
through PSO Murud Police Station
V/s.
Alwan N. Dafedar & O Rs.

:: ORDER BELOW EXH. 38 ::
[Passed on 09.10.2025]

1. This is second bail application filed by applicant/accused no. 1 Alwan Nisar Dafedar, u/sec. 483 of Bharatiya Nagari Suraksha Sanhita, 2023 (in short BNSS), in the present case arising out of Crime No. 35/2025 registered with Murud Police Station u/sec. 8(c), 20(b)(ii)(A) and 29 of The Narcotic Drugs and Psychotropic Substances Act, 1985 (in short NDPS Act), u/sec. 318(4), 336(3), 340(2), 338, 3(5) of Bharatiya Nyaya Sanhita, 2023 (in short BNS).

2. Perused the bail application and say of the prosecution. Heard both sides.

3. It is the case of the prosecution that, on 29.06.2025 while on night patrolling at around 01.49 a.m., near Shighre Check Post, Police noticed a Grey Suzuki Motor Scooter coming from Aagardanda towards Shighre Check Post. On seeing the Police, the pillion rider of the Scooter got down from the

Scooter and ran away. The Police got suspicious and gestured the rider of the Motor Scooter to stop at the Check Post, but, he did not stop and tried to flee. However, the Police accosted him. He was frightened and was behaving in a suspicious manner. On inquiry, the Police learnt that the rider of the Scooter i.e. accused no. 1 Alwan Nisar Dafedar had 'Charas' in the dickey of his Scooter. The panch witnesses were called. After following due procedure as per Law, the search of the accused and his Scooter was taken. In dickey there were two packets, one containing 484 grams of 'Charas' and other packet containing 292 grams 'Charas'. When the Police inquired about the papers of the Scooter from him i.e. accused no. 1 Alwan Dafedar, he stated that he do not have the papers of the Scooter and the said Scooter is in the name of one Anoop Jaiswal i.e. accused no. 11 and above said Charas in the dickey of the scooter, belongs to Anoop Jaiswal. Accused no. 1 also disclosed that the pillion rider who was with him was also involved in the offence and his name was Raju. Accordingly, Crime No.35/2025 had been registered against the accused at Murud Police Station under Section 8(c) and 20(b) II (B), 29 of the NDPS Act and 318(4), 336(3), 340(2), 338, 3(5) of the BNS. During the investigation the names of other accused were revealed. According to prosecution all accused were in some way or other, part of the chain for the sale and purchase of 'Charas'.

4. Ld. Adv. Shri. Prashant Vartak for applicant/ accused submits that, now the charge-sheet is filed and therefore that is sufficient change in circumstance to file the present bail

application. He submits that, it is alleged that, 776 gms Charas was seized from the dickey of the motor scooter bearing no. MH-48/BK-9251 which was ridden by him. He submits that, the pillion rider of the motor scooter ran away. He was not in conscious possession of the above said contraband. He further submits that, the above said motor scooter is owned by Anoop Jaiswal i.e. accused no. 11 and he has no involvement in the present crime. He further submits that, there is no compliance of Sec. 42 and Sec. 50 of NDPS Act. He submits that, since he and the pillion rider who ran away from the motor scooter were riding the motor scooter, the quantity of the contraband recovered be divided equally amongst them for determining whether the quantity recovered was small, less than commercial or commercial. He submits that, otherwise also the quantity which is seized from the dickey of the motor scooter cannot be said to be commercial quantity and therefore rigor of Sec. 37 of NDPS Act will not be applicable. He further submitted that, investigation is already completed and no purpose will be served by keeping the applicant/accused in the jail. He submitted that, the applicant be released on bail on such terms and conditions as this court deems fit and proper in the facts and circumstances of the case.

5. Prosecution has opposed the bail of accused no. 01 by filing say at Exh. 50 contending that, applicant/accused is found with 776 gms Charas. He further submits that, accused no. 6 purchased 600 gm Charas from accused no. 4 and made payment of Rs. 10,200/- to mother of accused no. 1 by Google

pay. The said mobile was used by accused no.1. Ld. P. P. Shri. Pawar submitted that, at the stage of bail it is not permissible for the court to accept the request of the applicant that, the recovery of Narcotic Drug should be divided equally amongst him and the pillion rider for determining whether the quantity recovered was small, less than commercial or commercial, and place reliance on the judgment of the Hon'ble Punjab and Haryana High Court in case of **Bhupindar Singh @ Bhinda V/s. State of Punjab, in Criminal Misc. No. 4801M of 2004.**

6. Ld. P. P. further contended that, applicant/accused if released on bail he will get involved in similar offences and that some accused are yet to be arrested and applicant/accused will not get himself available for trial. He further submitted that, in the present case 14 accused are arrested so far and two accused are still absconding. He further submitted that, police have recovered contraband i.e. Charas of totally 2 kg 687 gms from the possession of co-accused, which is commercial quantity and hence there is bar u/sec. 37 of NDPS Act, in granting bail, and hence his bail application be rejected.

7. In the present case only present applicant/accused no. 1 was arrested on the spot with the contraband Charas weighing 776 gms. All other accused are arrested on the basis of the memorandum statements of accused and statement of co-accused, from different places at different times.

8. The Hon'ble Apex Court in the case of **Amarsing**

Ramjibhai Barot V/s. State of Gujrat, reported in 2005 Supreme Court Cases (Cri,)1804 held that, Sec. 29 of the NDPS Act could not be applied where two individual were found together were carrying recovered substances. The Hon'ble Bombay High Court (R. S. Mohite, J) in the case of **Smt. Rashida Iqbal Khan V/s. State of Maharashtra, in Cri. Application No. 2177 of 2006** held that, the offences involving the commercial quantity with accused will have to be established either with the aid of Sec. 29 of NDPS Act or Sec. 120B of the IPC or any other relevant provision, and granted bail to accused. The Hon'ble Bombay High Court in the case of **Sagar Nana Borkar V/s. State of Maharashtra, in Criminal Bail Application no. 3636/2022** observing that, the recovery of the contraband from the possession of each of the accused should be considered separately, granted bail to accused before the High Court. Having regard to the material brought on record by the prosecution on the issue of conspiracy, this court prima facie has not noticed any positive evidence against applicants on the said issue.

9. It is no more res integra in view of the Judgment of Hon'ble Supreme Court in case of **Tufan Singh V/s. State of Tamilnadu, in Criminal Appeal No. 152/2013**, that the confessional statement of accused cannot bind them of the offence.

10 Applicant/accused no. 1 was found with 776 gm Charas which is non commercial quantity. In view of the legal

position cited supra, applicant/accused cannot be said to be in possession of commercial quantity. The present applicant/accused is not found with the commercial quantity. Sec. 37 of NDPS Act prima facie will not be attracted as there is no material on record to infer that applicant/accused has hatch conspiracy to commit the offence. That being so at this stage it is difficult to infer that applicant is involved in an offence of commercial quantity. As such parameters laid down u/sec. 37 of NDPS Act will be of hardly any consequence while considering the prayer for grant of bail of the applicant/accused herein. The court is not informed about any criminal antecedents of the applicant/accused, which would disentitle the applicant/accused from bail. As regards co-accused who was pillion rider on the motor scooter is yet to be arrested is concerned, since charge-sheet is filed against the present accused, the same cannot be ground for rejection of bail application. Moreover, his presence can be secured by imposing necessary conditions. Applicant/accused is under incarceration since 29.06.2025. Moreover, considering that the two of the co-accused are yet to be arrested the commencement of trial will take some time. Hence I am impelled to exercise discretion in favour of the applicant/accused. Hence the following order.

:: ORDER ::

1. Bail applications at Exh. 38 in Spl.(NDPS) Case No. 42/2025 is hereby allowed.
2. Applicant/accused no. 1 Alwan Nisar Dafedar, be released on bail on executing PR bond of Rs. 50,000/- with one or two sureties of like amount.

3. Applicant/Accused shall not in any way indulge in any criminal activities and he shall not influence the witnesses or otherwise interfere with the fair trial.
4. Applicant/Accused shall furnish the self attested documents showing his residential address and Adhar Card, Pan Card if any and furnish his mobile numbers.
5. Applicant/Accused shall not leave India without permission of the Court.
6. Applicant/Accused shall attend the Court on each and every date.
7. If Applicant/Accused violates any of the bail conditions, Id. P. P. will be at liberty to move the application for cancellation of bail.

Place: Alibag
Date: 09.10.2025.

(R. D. Sawant)
Sessions Judge, Raigad-Alibag.

CERTIFICATE

I affirm that, the contents of this P.D.F file order are same, word to word, as per the original order.

Name of Stenographer : Smt. S. S. Puro (Grade- I)

Court : Principal District Judge,
Raigad-Alibag.

Date of Order : 09.10.2025.

Order signed by the
Presiding Officer on : 09.10.2025.

Order uploaded on : 10.10.2025.